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Section 14.030 **Rate adjustment.** The sections on rate recommendations and adjustments to the rate found in Section 15.000 also apply to voluntary receiverships.

Section 14.040 **Controlling individuals; restrictions on licensure.** No controlling individual of a residential program placed into receivership under Section 14.000 shall apply for or receive a license to operate a program for five years from the commencement of the receivership period. Section 14.000 does not apply to programs that are owned or operated by controlling individuals, that were in existence prior to the date of the receivership agreement, and that have not been placed into receivership.

Section 14.050 **Liability.** The controlling individuals of a residential program placed into receivership remain liable for any claims made against the residential program that arose from incidents or events that occurred prior to the commencement of the receivership period. Neither the Department nor the managing agent of the Department assumes this liability.

Section 14.060 **Liability for financial obligations.** Neither the Department nor the managing agent will be liable for payment of any financial obligations of the residential program or of its controlling individuals incurred prior to the commencement of the receivership period unless such liability is expressly assumed in the receivership agreement. Those financial obligations remain the liability of the residential program and its controlling individuals. Financial obligations of the residential program incurred after the commencement of the receivership period are the responsibility of the Department or the managing agent to the extent such obligations are expressly assumed by each in the receivership or management agreements. The controlling individuals of the residential program remain liable for any financial obligations incurred after the commencement of the receivership period to the extent these obligations are not reimburse in the rate paid to the residential program and are reasonable and necessary to the operation of the residential program. These financial obligations, or any other financial obligations incurred by the residential program prior to the commencement of the receivership period which are necessary to the continued operation of the residential program, may be deducted from any rental payments owed to the controlling receivership agreement.

Section 14.070 **Physical plant of the residential program.** Occupation of the physical plant after commencement of the receivership period will be controlled by items A and B.

A. If the physical plant of a residential program placed in receivership is owned by a controlling individual or related party, the physical plant may be used by the Department or the managing agent for purposes of the receivership as long as the receivership period continues. A fair monthly rental will be paid by the Department or the managing agent to the owner of the physical plant. This fair monthly rental will be determined by considering all relevant factors



STATE: MINNESOTA

ATTACHMENT 4.19-D (ICF/MR)

Effective: April 1, 2000

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TN: 00-16

Approved: *Sept. 19, 2000*

Supersedes: 99-22 (99-13/98-35/98-21/97-35/97-27/96-32/96-20/95-40/94-19/93-38/92-39/  
91-36/90-09/89-65/89-56/88-86/88-24/87-81)

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necessary to meet required arms-length obligations of controlling individuals. This rental will not include any allowance for profit or be based on any formula that includes an allowance for profit.

B. If the owner of the physical plant is not a related party, the controlling individual shall continue as the lessee of the property. However, during the receivership period, rental payments shall be made to the owner of the physical plant by the Department or the managing agent on behalf of the controlling individual. Neither the Department nor the managing agent assumes the obligations of the lease unless expressly stated in the agreement. Should the lease expire during the receivership, the Department or the managing agent may negotiate a new lease for the term of the receivership period.

Section 14.080 **Receivership costs.** The Department may use the accounts and funds that would have been available for the room and board, services, and program costs of persons in the residential program for costs, cash flow, and accounting purposes related to the receivership.

Section 14.090 **Receivership rate extension.** For the biennium ending June 30, 1993, if a facility's residents continue to be served in the same location, the Department may continue the operating cost payment rate, including any program operating cost adjustments and special operating costs, for facilities under receivership beyond the receivership period in order that this portion of the payment rate remain in effect for one full calendar year plus the following nine months. The allowable property-related costs of the previous operator before the receivership shall be the basis for establishing the property-related payment rate for rate periods following the end of the receivership period.

Section 14.100 **Sale of a facility under receivership.** For the fiscal year ending June 30, 1994 or June 30, 1997, if a facility which is in receivership under Section 14.000 or 15.000 is sold to an unrelated organization:

A. The facility shall be considered a new facility under Section 12.000 for purposes of rate setting;

B. The facility's historical basis for the physical plant, land, and land improvements for each facility must not exceed the prior owner's aggregate historical basis for these same assets for each facility; and

C. The allocation of the purchase price between land, land improvements, and physical plant shall be based on the real estate appraisal using the depreciated replacement cost method.



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**SECTION 15.000 INVOLUNTARY RECEIVERSHIP.**

**Section 15.010 Application.** In addition to any other remedy provided by law, the Department may petition the district court in the county where the program is located for an order directing the controlling individuals of the program to show cause why the Department should not be appointed receiver to operate the program. The petition must contain proof by affidavit: (1) that the Department has either begun license suspension or revocation proceedings, suspended or revoked a license, or has decided to deny an application for licensure of the program; or (2) it appears to the Department that the health, safety, or rights of the residents may be in jeopardy because of the manner in which the program may close, the program's financial condition, or violations committed by the program of federal or state laws or rules. If the license holder, applicant, or controlling individual operates more than one program, the Department's petition will specify and be limited to the residential program for which it seeks receivership. The affidavit submitted must set forth alternatives to receivership that have been considered, including rate adjustments. The order to show cause is returnable not less than five days after service is completed and must provide for personal service of a copy to the program administrator and to the persons designated as agents by the controlling individuals to accept service on their behalf.

**Section 15.020 Appointment of receiver.** If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the program, the court will appoint the Department as receiver to operate the program. The Department may contract with another entity or group to act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the program subject at all times to the review and approval of the Department.

**Section 15.030 Powers and duties of the receiver.** Within 36 months after the receivership order, the receiver will provide for the orderly transfer of the persons served by the program to other residential programs or make other provisions to protect their health, safety, and rights. The receiver or managing agent will correct or eliminate deficiencies in the program that the Department determines endanger the health, safety, or welfare of the persons being served by the residential program unless the correction or elimination of deficiencies involves major alteration in the structure of the physical plant. If the correction or elimination of the deficiencies requires major alterations in the structure of the physical plant, the receiver will take actions designed to result in the immediate transfer of persons served by the program. During the period of the receivership, the receiver and the managing agent will operate the program in a manner designed to preserve the health, safety, rights, adequate care, and supervision of the persons served by the program. The receiver or the managing agent may make contracts and incur lawful expenses. The receiver or the managing agent shall collect



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incoming payments from all sources and apply them to the cost incurred in the performance of the functions of the receivership. No security interest in any real or personal property comprising the residential program or contained within it, or in any fixture of the physical plant, shall be impaired or diminished in priority by the receiver or the managing agent.

Section 15.040 **Liability and liability for financial obligations.** These are the same as those for voluntary receivership that are found in Section 14.000.

Section 15.050 **Physical plant of the residential program.** Occupation of the physical plant shall be governed by the following:

A. The physical plant owned by a controlling individual of the residential program or related party must be made available for the use of the program throughout the receivership period. The court will determine a fair monthly rental for the plant, taking into account all relevant factors necessary to meet required arms-length obligations of controlling individuals. The rental fee must be paid by the receiver to the appropriate controlling individuals or related parties for each month that the receivership remains in effect. No payment made to a controlling individual or related party by the receiver or the managing agent or any state agency during a period of the receivership shall include any allowance for profit or be based on any formula that includes an allowance for profit.

B. If the owner of the physical plant of a program is not a related party, the court will order the controlling individual to continue as the lessee of the property during the receivership period. Rental payments during the receivership period shall be made to the owner of the physical plant by the Department or the managing agent on behalf of the controlling individual.

Section 15.060 **Fee.** a receiver or the managing agent is entitled to a reasonable fee as determined by the court.

Section 15.070 **Termination.** An involuntary receivership terminates 36 months after the date on which it was ordered or at any other time designated by the court or when any of the following occurs:

A. The Department determines that the program's license application should be granted or should not be suspended or revoked.

B. A new license is granted to the program.



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C. The Department determines that all persons residing in the program have been provided with alternative residential programs.

D. The residential program closes.

**Section 15.080 Emergency procedure.** If it appears from the petition filed or from the affidavit filed with the petition or from testimony of witnesses under oath, that there is probable cause to believe that an emergency exists in a program, the court shall issue a temporary order for appointment of a receiver within five days after receipt of the petition. Notice of the petition must be served on the residential program administrator and on the persons designated as agents by the controlling individuals to accept service on their behalf. A hearing on the petition must be held within five days after notice is served unless the administrator or designated agent consents to a later date. After the hearing, the court may continue, modify, or terminate the temporary order.

**Section 15.090 Rate recommendation.** The Department may review rates of a program participating in the medical assistance program which is in receivership and that has needs or deficiencies documented by the Department of Health or the Department of Human Services. If the Department determines that a review of the rate established is needed, the Department will:

A. Review the order or determination that cites the deficiencies or needs.

B. Determine the need for additional staff, additional annual hours by type of employee, and additional consultants, services, supplies, equipment, repairs, or capital assets necessary to satisfy the needs or deficiencies.

**Section 15.100 Adjustment to the rate.** Upon review of rates the Department may adjust the program's payment rate. The Department will review the circumstances, together with the residential program cost report, to determine whether or not the deficiencies or needs can be corrected or met by reallocation residential program staff, costs, revenues, or other resources including any investments, efficiency incentives, or allowances. If the Department determines that any deficiency cannot be corrected or the need cannot be met with the payment rate currently being paid, the Department shall determine the payment rate adjustment by dividing the additional annual costs established during the Department's review by the residential program's actual resident days from the most recent desk-audited cost report or the estimated resident days in the projected receivership period. Upon the subsequent sale or transfer of the program, the Department may recover amounts that were paid as payment rate adjustments under this section. The buyer or transferee shall repay this amount to the Department within



STATE: MINNESOTA

ATTACHMENT 4.19-D (ICF/MR)

Effective: April 1, 2000

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TN: 00-16

Approved: Sept. 19, 2000

Supersedes: 99-22 (99-13/98-35/98-21/97-35/97-27/96-32/96-20/95-40/94-19/93-38/92-39/  
91-36/90-09/89-65/89-56/88-86/88-24/87-81)

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60 days after the Department notifies the buyer or transferee of the obligation to repay.

**Section 15.110 Receivership costs.** The Department may use the accounts and funds that would have been available for the room and board, services, and program costs of persons in the residential program for costs, cash flow, and accounting purposes related to the receivership.

**Section 15.120 Receivership rate extension.** This section is the same as Section 14.090.

#### **SECTION 16.000 RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS.**

**Section 16.010 Eligibility.** The purpose of the special needs rate exception is to facilitate the movement of very dependent mentally retarded persons from regional treatment centers to community-based ICFs/MR and to prevent the admission or readmission of very dependent clients with mental retardation to regional treatment centers from community-based ICF/MR programs.

The special needs rate exception is to provide to a special client services whose costs are not included in the per diem rate of the ICFs/MR or the per diem of the day training and habilitation service. The special needs rate exception is only to be allowed after all other funding sources or alternatives have been exhausted.

The additional funds made available by this rate exception are used to provide additional staff for client supervision and training, additional medical or therapeutic services, and additional equipment to enable the community providers to maintain or admit very dependent clients to their residential or day programs.

**Section 16.020 Payment rate.** The payment rate is calculated as follows:

A. Determine the payment limit. The combined per diem costs of day training and habilitation services, ICF/MR services, and the special needs rate exception payment for a client shall not exceed the medical assistance regional treatment center per diem for ICF/MR services. Legislative changes approved in July 1991 established this rate to be, for purposes of special needs rate calculations, the regional treatment center per diem rate in effect on July 1, 1990, indexed annually by the urban consumer price index (all items as forecasted by Data Resources, Inc.) for the next fiscal year over the current fiscal year.



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The amount of funding available as a special needs rate exception differs between clients, depending on the cost of current medical assistance-funded ICF/MR and day training and habilitation services an individual client receives.

B. Calculate the allowable costs. For the purposes of this section, "allowable costs" include wages for direct care staff (including nursing staff) plus payroll-related costs and fringe benefit costs, consultant fees, staff training costs (trainer fees and wages paid to staff to attend), and certain equipment and supplies. Administrative costs and physical plant modifications are examples of costs that are not allowable for this purpose. Costs for services available from other resources are also excluded.

C. Compare allowable costs and limits outlined in item A to the facility's projected budget. The application for a rate exception includes client and provider eligibility information, a description of the allowable services intended to meet a short-term need for intensive services, and estimated costs for those services.

D. Approve the rate. The amount approved as a special needs rate exception is established based on the calculations outlined above in items A through C, as well as on the basis of reasonableness of costs (for example, typical wages for the industry), and the costs for similar services under this plan (for example, fee for assessment and program development by a consulting psychologist).

**Section 16.030 Payment for persons with special needs for crisis intervention services.** Community-based crisis services authorized by the Department, to a resident of an intermediate care facility for persons with mental retardation (ICF/MR) reimbursed under this section shall be paid by medical assistance in accordance with items A to F.

A. "Crisis services" means the specialized services listed in subitems (1) to (4) purchased under contract by the ICF/MR for a resident to prevent the resident from requiring placement in a more restrictive institutional setting such as an inpatient hospital or regional treatment center and to maintain the recipient in the present community setting. The crisis services provider:

(1) Assesses the recipient's behavior and environment to identify factors contributing to the crisis.

(2) Develops a resident-specific intervention plan in coordination with the service planning team and provides recommendations for revisions to the individual service plan if necessary to prevent or minimize the likelihood of future crisis situations. The



intervention plan must include a transition plan to aid the resident in returning to the community-based ICF/MR if the resident is receiving residential crisis services.

(3) Consults with and provides training and ongoing technical assistance to the resident's service providers to aid in the implementation of the intervention plan and revisions to the individual service plan.

(4) Provides residential crisis services in an alternative, state-licensed setting approved by the Department when an ICF/MR is not able, as determined by the commissioner, to provide the intervention and protection of the resident and others living with the resident that is necessary to prevent the resident from requiring placement in a more restrictive institutional setting.

B. Payment for crisis services in item A shall be made only for services provided when the ICF/MR has:

(1) Executed a cooperative agreement with the crisis services provider to implement the intervention plan and revisions to the individual service plan as necessary to prevent or minimize the likelihood of future crisis situations, to maintain the resident in the present community setting, and to prevent the resident from requiring a more restrictive institutional setting; and

(2) A shared services agreement with the crisis services provider in accordance with Minnesota law authorizing development of this service.

C. Payment for residential crisis services is limited to 21 days, unless an additional period is authorized by the commissioner or part of an approved regional plan.

D. Payment to the ICF/MR shall be made for up to 18 therapeutic leave days during which the resident is receiving residential crisis services, if the ICF/MR is otherwise eligible to receive payment for a therapeutic leave day under Minnesota rules governing therapeutic leave.

E. Payment rates for crisis services are established consistent with county negotiated crisis intervention services.

F. Payment under this section will be terminated if the commissioner determines that the ICF/MR is not meeting the terms of the cooperative agreement under item B, subitem (1) or that the resident will not return to the ICF/MR.



## **SECTION 17.000 SPECIAL SITUATIONS.**

Section 17.010 **Closure.** In order to facilitate an orderly transition of residents from community ICFs/MR to services provided under the home and community-based services waiver programs, the Department may contract with the provider to modify the methods and standards for ICF/MR reimbursement as follows:

- A. Extend the interim and settle-up rate provisions to include facilities covered by this section.
- B. Extend the length of the interim period. An extension is limited to 24 months, except in instances when the Department grants a variance for facilities that are licensed and certified to serve more than 99 persons. In no case will the Department approve an interim period which exceeds 36 months.
- C. Waive the investment per bed limitations for the interim period and the settle-up rate.
- D. Limit the amount of reimbursable expenses related to the acquisition of new capital assets.
- E. Prohibit the acquisition of additional capital debt or refinancing of existing capital debt unless prior approval is obtained from the Department.
- F. Establish an administrative operating cost limitation for the interim period and the settle-up rate.
- G. Require the retention of financial and statistical records until the Department has audited the interim period and the settle-up rate.
- H. Require that the interim period be audited by a certified or licensed public accounting firm.
- I. Amend any other provision to which all parties to the contract agree. Supplement 1 to this Attachment contains the portions of a closure agreement which may be established under this provision.



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Section 17.015 **Service reconfiguration project.** The Department may approve a project to reconfigure two existing facilities, totaling 60 licensed beds, located on the same campus. The project requires the relocation of up to six beds to a six-bed facility, while reconfiguring the two existing facilities into a 34-bed facility and a ten-bed facility.

- A. Ten beds will be decertified as the facilities are reconfigured.
- B. Two beds in the 34-bed facility will be reserved for respite care for individuals receiving home and community-based services under waiver programs.
- C. Upon Department approval:
  - (1) the two existing facilities' aggregate investment-per-bed limits in effect before the reconfiguration is the investment-per-bed limit after the reconfiguration;
  - (2) the 34-bed and ten-bed facilities are eligible for a one-time rate adjustment to be negotiated with the Department taking into consideration estimated excess revenues available from the six-bed facility;
  - (3) the relocated six-bed facility will receive the payment rates established for the former 46-bed facility until each facility files a cost report for a period of five months or longer ending on December 31 following their opening and those reports are desk audited by the Department. The 34-bed and ten-bed facilities will file their regularly scheduled annual cost reports;
  - (4) all facilities are exempt from the spend-up and high cost limits in Section 7.015 for the rate year following the first cost report submitted under subitem (3); and
  - (5) the maintenance limit for the 34-bed facility will be established following the language in Section 17.040. The maintenance limit for the ten-bed facility will be adjusted by the same ratio used to adjust the 34-bed facility's maintenance limit.

Section 17.020 **Wage equity.**

Effective July 1, 1998, and ending September 30, 2000, the Department will make available the appropriate salary adjustment cost per diem calculated in items A to E to the total operating cost payment of each facility subject to payment under this attachment and the performance based contracting demonstration waiver project. The salary adjustment cost per diem must be